

**ORDINANCE NO. 2009-222**

**PURSUANT TO THE PROVISIONS OF CODE OF ALABAMA 1975, SECTIONS 11-51-200 THROUGH 11-51-207, AN ORDINANCE LEVYING A SALES, EXCISE OR USE TAX AGAINST PERSONS, FIRMS OR CORPORATIONS STORING, USING OR OTHERWISE CONSUMING OR ENGAGED IN THE BUSINESS OF SELLING AT RETAIL TANGIBLE PERSONAL PROPERTY, OR CONDUCTING PLACES OF AMUSEMENT IN THE CITY OF MADISON, ALABAMA; AND PROVIDING FOR THE COLLECTION OF SAID TAXES AND PROVIDING PENALTIES FOR THE VIOLATION OF THIS ORDINANCE.**

**BE IT ORDAINED** by the City Council of the City of Madison, Alabama, as follows:

**Section 1.** That Section 7-50 of the *Code of Ordinances, City of Madison, Alabama*, is hereby amended to read as follows:

**“Sec. 7-50. Levy of sales tax.**

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the following persons on account of the business activities and in the amounts to be determined by the application of rates against gross sales or gross receipts, as the case may be, as follows:

(1) Upon every person, firm, or corporation (including the state, the University of Alabama, Auburn University and all other institutions of higher learning in the state, whether such institutions be denominational, state, county or municipal institutions, and any association or other agency or instrumentality of such institutions) engaged or continuing within the city in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character (not including, however, bonds or other evidences of debts or stocks, nor sale or sales of material and supplies to any person for use in fulfilling a contract for the painting, repair or reconditioning of vessels, barges, ships, other watercraft, and commercial fishing vessels of over five tons load displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural Resources) an amount equal to 3 percent of the gross proceeds of sales of the business except where a different amount is expressly provided herein; provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of such business at the rates specified, when such person's books are kept so as to show separately the gross proceeds of sales of each business, and when such person's books are not so kept such person shall pay the tax as retailer on the gross sales of the business. Where any used part including tires of an automotive vehicle or a truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or rebuilt part or tire, the tax levied herein shall be paid on the net difference, that is, the price of the new or used part or tire sold less the credit for the used part or tire taken in trade, provided, however, this provision shall not be construed to include batteries.

(2) Upon every person, firm, or corporation engaged or continuing within the city in the business of conducting or operating places of amusement or entertainment; billiard and pool rooms; bowling alleys; amusement devices; musical devices; theaters; opera houses; moving picture shows; vaudeville; amusement parks; athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games, and including athletic contests conducted by or under the auspices of any educational institution within the city or any athletic association thereof, or other association whether such institution or association be a denominational, state or county, or a municipal institution or association or a state, county or city school, or other institution, association or school; skating rinks; race tracks; golf courses or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the city, an amount equal to 3 percent of the gross receipts of any such business. Provided, however, notwithstanding any language to the contrary, the tax provisions so specified shall not apply to any athletic event conducted by a public or nonpublic primary or secondary school or any athletic event conducted by or under the auspices of the Alabama High School Athletic Association. The tax amount which would have been collected pursuant to this subdivision shall continue to be collected by the public or nonpublic primary or secondary school, but shall be retained by the school which collected it and shall be used by the school for school purposes.

(3) Upon every person, firm, or corporation engaged or continuing within the city in the business of selling at retail machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property, an amount equal to 1 ½ percent of the gross proceeds of the sale of such machines; provided, that the term "machines" as herein used shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property and the parts of such machines, attachments and replacements therefor which are made or manufactured for use on or in the operation of such

machines and which are necessary to the operation of such machines and are customarily so used.

(4) Upon every person engaged or continuing within the city in the business of selling at retail any automotive vehicle or truck trailer, semitrailer or house trailer, or mobile home set-up materials and supplies, including but not limited to steps, blocks, anchoring, cable pipes, and any other materials pertaining thereto, an amount equal to 1 ½ percent of the gross proceeds of sale of such automotive vehicle or truck trailer, semitrailer or house trailer or mobile home set-up materials and supplies; provided, however, where a person subject to the tax provided for in this subsection withdraws from such person's stock in trade any automotive vehicle, truck trailer, semitrailer or house trailer for use by such person or by such person's employee or agent in the operation of such business, there shall be paid, in lieu of the tax levied herein, a fee of \$10.00 per year or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of such person. Each such year or part thereof shall begin with the day or anniversary date, as the case may be, of such withdrawal and shall run for the 12 succeeding months or part thereof during which such automotive vehicle, truck trailer, semitrailer or house trailer shall remain the property of such person. Where any used automotive vehicle, truck trailer, semitrailer or house trailer is taken in trade or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference; that is, the price of the new or used vehicle sold, less the credit for the used vehicle taken in trade.

(5) Upon every person, firm or corporation engaged or continuing within the city in the business of selling at retail any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms, and the parts of such machines, machinery or equipment, attachments and replacements therefor which are made or manufactured for use on or in the operation of such machine, machinery or equipment and which are necessary to and customarily used in the operation of such machine, machinery or equipment, an amount equal to one 1 ½ percent of the gross proceeds of the sale thereof; provided, however, the 1 ½ percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products or used in connection with the production of agricultural produce or products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference; that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade.

(6) Upon every person, firm or corporation engaged or continuing within the city in the business of selling through coin-operated dispensing machines food and food products for human consumption, not including beverages other than coffee, milk, milk products and substitutes therefor, there is hereby levied a tax equal to three percent of the cost of such food, food products and beverages sold through such machines, which cost, for the purpose of this subsection, shall be the gross proceeds of sales of such business.

(7) Sales of automobiles, motorcycles, trucks, truck trailers or semitrailers that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside Alabama, are not subject to the City of Madison sales tax. Sales of other vehicles such as mobile homes, motor bikes, all terrain vehicles and boats do not qualify for the export exemption provision and are taxable unless the dealer can provide factual evidence that the vehicle was delivered outside of Alabama or to a common carrier for transportation outside Alabama. In order for the sale to be exempt from City tax, the information relative to the exempt sale shall be documented on forms approved by the City of Madison Revenue Department.

(8) Any person taxable under this section, having cash and credit sales, may report such cash sales, and the taxpayer shall thereafter include in each monthly report all credit collections made during the month preceding, and shall pay the taxes due thereon at the time of filing such report, but in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made."

**Section 2.** That Section 7-52 of the *Code of Ordinances, City of Madison, Alabama*, is hereby amended to read as follows:

**"Sec. 7-52. Levy of use, storage or consumption tax.**

(a) An excise tax is hereby imposed on the storage, use or other consumption in the city of tangible personal property (not including materials and supplies bought for use in fulfilling a contract for the painting, repairing or reconditioning of vessels, barges, ships, other watercraft and commercial fishing vessels of over five tons displacement as registered with the U.S. Coast Guard and licensed by the State of Alabama Department of Conservation and Natural

Resources) purchased at retail on or after January 1, 2010, for storage, use or other consumption in the city, except as provided in subsections (b), (c) and (d) of this section, at the rate of three percent of the sales price of such property.

(b) An excise tax is hereby imposed on the storage, use or other consumption in the city of any machines used in mining, quarrying, compounding, processing and manufacturing of tangible personal property purchased at retail on or after January 1, 2010, at the rate of 1 1/2 percent of the sales price of any such machine; provided, that the term "machine" as herein used shall include machinery which is used for mining, quarrying, compounding, processing or manufacturing tangible personal property and the parts of such machines, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machines and which are necessary to the operation of such machines and are customarily so used.

(c) An excise tax is hereby imposed on the storage, use or other consumption in the city of any automotive vehicle, truck trailer, semitrailer or house trailer purchased at retail on or after January 1, 2010, for storage, use or other consumption in the city at the rate of 1 1/2 percent of the sales price of such automotive vehicle, truck trailer, semitrailer or house trailer. Where any used automotive vehicle, truck trailer, semitrailer or house trailer is taken in trade, or in a series of trades, as a credit or part payment on the sale of a new or used vehicle, the tax levied herein shall be paid on the net difference, that is, the price of the new or used vehicle sold, less the credit for the used vehicle taken in trade.

(d) An excise tax is hereby levied and imposed on the storage, use or other consumption in the city of any machine, machinery or equipment which is used in planting, cultivating and harvesting farm products, or used in connection with the production of agricultural produce or products, livestock or poultry on farms and the parts of such machines, machinery or equipment, attachments and replacements therefor, which are made or manufactured for use on or in the operation of such machine, machinery or equipment and which are necessary to and customarily used in the operation of such machine, machinery or equipment, and which are purchased at retail after January 1, 2010, for the storage, use or other consumption in the city at the rate of 1 1/2 percent of the sales price of such property, regardless of whether the retailer is or is not engaged in the business in the city; provided, however, the 1 1/2 percent rate herein prescribed with respect to parts, attachments and replacements shall not apply to any automotive vehicle or trailer designed primarily for public highway use, except farm trailers used primarily in the production and harvesting of agricultural commodities. Where any used machine, machinery or equipment which is used in planting, cultivating and harvesting farm products or used in connection with the production of agricultural produce or products, livestock and poultry on farms is taken in trade or in a series of trades as a credit or part payment on a sale of a new or used machine, machinery or equipment, the tax levied herein shall be paid on the net difference, that is, the price of the new or used machine, machinery or equipment sold, less the credit for the used machine, machinery or equipment taken in trade."

**Section 3.** That Section 7-55 of the *Code of Ordinances, City of Madison, Alabama*, is hereby amended as follows:

**"Sec. 7-55. Procedure for assessment and collection of tax; appeals; claims for refund.**

(a) *Records to be kept.*

It shall be the duty of every person engaging or continuing in this state in any business for which a privilege tax is imposed by this division, to keep and preserve suitable records of the gross sales, gross proceeds of sales and gross receipts or gross receipts of sales of such business and such other books or accounts as may be necessary to determine the amount of tax for which he is liable, under the provisions of this division. It shall be the duty of every person to keep and preserve all invoices of goods, wares and merchandise purchased, for resale or otherwise, and all such books, invoices and other records shall be open for examination by the City of Madison Revenue Department or its duly authorized agent. Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. All sales shall be subject to tax in the absence of such separate records.

(b) *Penalty for willful refusal to make reports or permit examination of records.*

Any person subject to the provisions of this division willfully refusing to make the reports herein required, or who shall refuse to permit the examination of his records by the City of Madison Revenue Department, or its duly authorized agents, shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$50 nor more than \$500 for each offense, and in addition may be imprisoned in the county jail for a period not to exceed six months. Each month of failure to make such reports shall constitute a separate offense and each refusal of a written demand of the City of Madison Revenue

Department to examine, inspect or audit such records, shall constitute a separate offense.

(c) *Procedures governing entry of assessments.*

If the City determines that the amount of any tax as reported on a return is incorrect, if no return is filed or if full payment of tax penalties and interest, if any, is not remitted with any return required to be filed, the City is authorized to calculate the correct tax or value based upon the most accurate and complete information reasonably obtainable by the City. Upon determination by the City of the correct tax due or upon failure of the taxpayer to remit payment of tax with any return required to be filed, the City shall send a notice and demand for payment of tax to the taxpayer at the taxpayer's last known address. If the taxpayer fails or refuses to pay the amount of tax, penalties and interest, if any, as set forth in such notice and demand for payment of tax within 30 days from the date of mailing of such notice of demand, the City may thereafter enter a preliminary assessment of the correct tax or value upon appropriate record, including any applicable penalty and interest. Where the amount of tax or value reported on a return is undisputed by the City or the taxpayer consents in writing to amount of any deficiency, determination of value or preliminary assessment, the City may immediately enter a final assessment for the amount of said tax or value, plus applicable penalty and interest. At any time, the City may enter a final jeopardy assessment as provided pursuant to the provisions of Code of Ala. 1975, ss 40-17A-12, 40-29-90 and 40-29-91.

Any preliminary assessment must be entered by the City within three years from the due date of the taxpayer's return, or two years from the date the taxpayer's return is filed with the City, whichever is later, or if no return is required to be filed, within three years of the due date of the tax; provided, a preliminary assessment may be entered at any time if no return is filed as required, or if a false or fraudulent return is filed with the intent to evade tax, and a preliminary assessment may be entered within six years from the due date of the return of any taxpayer or six years from the date the return is filed with the City, whichever is later, if such return omits more than 25 percent of the correct (amount) of tax required to be shown on said return, provided further, the time for entering a preliminary assessment shall be suspended during the 30-day period during which a notice and demand for payment of tax has been issued to the taxpayer by the City. Notice of the entry of preliminary assessment entered by the City, or a copy thereof shall be promptly mailed by the City to the taxpayer's last known address by either (i) first class United States mail, postage prepaid or (ii) certified mail with return receipt requested or (iii) personal delivery upon the taxpayer.

If a taxpayer disagrees with a preliminary assessment as entered by the City, the taxpayer may file a written petition for review with the City within 30 days from the date of entry of the preliminary assessment setting out the specific objections to the preliminary assessment. Upon receipt of a timely filed petition for review, the City shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the City to present their respective positions, discuss any omissions or errors and to attempt to agree upon any changes or modifications to their respective positions. If a written petition for review is not timely filed or, upon proper and timely filing, it is determined by the City that the preliminary assessment is due to be upheld in whole or in part the City may make the assessment final in the amount of tax due as computed by the City, with applicable interest and penalty computed to the date of entry of the final assessment. Such final assessment entered by the City or a copy thereof, shall be mailed by the city to the taxpayer by either (i) first class United States mail, postage prepaid, (ii) certified mail with return receipt requested, or (iii) personal delivery upon the taxpayer.

Any taxpayer, who has duly appeared and filed a timely written petition for review of any preliminary assessment, dissatisfied with the final assessment may file a notice of appeal with the Circuit Court of Madison County, within 30 days from the date of entry of the final assessment by the city.

(d) *Procedure governing petitions for refund.*

(1) Any taxpayer may file a petition for refund with the City for any overpayment of tax or other amount erroneously paid to the city or concerning any refund which the City is required to administer; provided, if a final assessment for the tax has been entered by the City, a petition for refund of all or a portion of the tax may be filed only if the final assessment plus applicable interest has been paid in full prior to or with the filing of such petition for refund.

(2) A petition for refund must be filed with the City within three years from the date the return was filed or within two years from the date of payment of the tax, whichever is later.

(3) The City must either grant or deny a petition for refund within six months from the date the petition for refund is filed unless said period is extended by written agreement by the taxpayer and the City. The city shall notify the taxpayer of the City's decision concerning the petition for refund by sending a copy of the same by either (i)

first class United States mail, postage prepaid or (ii) by certified mail, return receipt requested, sent to the taxpayer's last known address. In the event the City fails to grant a refund within the time provided herein, said petition for refund shall be deemed to be denied.

(4) If the City determines that a refund is due and the taxpayer's petition for refund is due to be granted, the amount of overpayment plus accrued interest may first be credited by the City against any outstanding final tax liabilities due and owing by the taxpayer to the City, and the balance of such overpayment, if any, shall be refunded to the taxpayer. If any refund or part thereof is credited to any other tax by the City, the City shall provide a written detailed statement to the taxpayer showing the amount of overpayment, the amount credited for payment to other taxes and the amount refunded.

(5) A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the Circuit Court of Madison County, within two years from the date the petition for refund is denied. If such appeal is not filed with the Circuit Court of Madison County within two years from the date such petition for refund is denied, then such appeal shall be dismissed for lack of prosecution jurisdiction."

**Section 4.** That Ordinance No. 2006-12, approved and adopted by the City Council of the City of Madison, Alabama, on February 13, 2006, is hereby amended and shall be codified as follows:

**"Sec. 7-56. Sales tax discounts.**

A discount in the amount of five percent of the first \$100.00 or less in sales tax, plus two percent of sales taxes over \$100.00, if any, are allowed when sales taxes are paid before becoming delinquent. However, the discount is limited to a total maximum of \$400.00 per month and no discount is authorized or allowed upon any sales taxes which are not paid before delinquency. No discount is allowable upon payment of use tax."

**Section 5.** That Section 7-57 of the *Code of Ordinances, City of Madison, Alabama*, shall hereby read as follows:

**"Sec. 7-57. Taxes due monthly; filing of reports; election to file quarterly; extension of time for making return.**

(a) The taxes levied under the provisions of this article, except as otherwise provided in subsection (d), shall be due and payable in monthly installments on or before the 20<sup>th</sup> day of the month next succeeding the month in which the tax accrues.

(b) Except as otherwise provided in subsection (d) on or before the 20<sup>th</sup> day of each month, every person on whom the taxes levied by this article are imposed, shall report to the department, on a form prescribed by the department, a true and correct statement showing such information as the department may require, and shall pay to the department the amount of taxes shown to be due.

(c) When the total City sales tax for which any person is liable under this article averages less than two hundred dollars (\$200) per month during the preceding calendar year, a quarterly return and remittance in lieu of the monthly returns may be made, by election of the taxpayer to the department, on or before the 20<sup>th</sup> day of the month next succeeding the end of the quarter for which the tax is due under any rules and regulations as may be prescribed. The election to file quarterly shall be made in writing no later than February 20 of each year and shall be filed with the department. Notwithstanding the above, no City sales tax return shall be due until January 20 of each year unless the total City sales tax for which any person is liable under this article during the preceding calendar year exceeds ten dollars (\$10).

(d) The department, for good cause, may extend the time for making any city or city-administered return required under the provisions of this article, but the time for filing any such return shall not be extended for a period greater than 30 days from the date such return is due to be made.

(e) The monthly reports herein required to be made are not required to be made under oath, but wherever in this ordinance any report is required to be sworn to, the same shall be sworn to by the taxpayer or his agent before some officer authorized to administer oaths, and any false statement to a material fact made with intent to defraud shall constitute perjury, and upon conviction thereof, the person so convicted shall be punished as provided by law."

**Section 6.** That Section 7-58 of the *Code of Ordinances, City of Madison, Alabama*, shall hereby read as follows:

**"Sec. 7-58. Confidentiality, disclosure of tax return information and provisions for the exchange of tax information.**

(a) It shall be unlawful for any person to print, publish or divulge the return of any taxpayer or any part thereof or any information secured in arriving at the amount of tax or value reported for any purpose other than the proper administration of any matter administered by the City, or upon order of any court, or as otherwise allowed in this section. Any person violating the provisions of this section shall, for each act of disclosure, have committed a Class A misdemeanor.

(b) The provisions of this section shall not apply to returns filed and information secured under laws of this City (i) governing the registration and titling of motor vehicles, (ii) levying or imposing excise taxes or inspection fees upon the sale of, use and other disposition of gasoline and other petroleum products, or (iii) governing the licensing of motor vehicle dealers, reconditioners, rebuilders, wholesalers, and automotive dismantlers and parts recyclers.

(c) The City shall promulgate reasonable regulations permitting and governing the exchange of tax returns, information, records and other documents secured by the City, with tax officers of other agencies of the State of Alabama, municipal and county government agencies in Alabama, federal government agencies, any association of state government tax agencies, any state government tax agencies of other states and any foreign government tax agencies, provided, however, (i) that any such tax returns, information, records or other documents remain subject to the confidentiality provisions set forth herein; and (ii) that such exchange must be for one or more of the following purposes:

- a. Collecting taxes due;
- b. Ascertaining the amount of taxes due from any person; and
- c. Determining whether a person is liable for, or whether there is probable cause for believing such person might be liable for, the payment of any tax to such federal, state, county, municipal or foreign government agency."

**Section 7.** That Section 7-59 of the *Code of Ordinances, City of Madison, Alabama*, shall hereby read as follows:

**"Sec. 7-59. Person selling out or quitting business to file return; part of purchase money to be withheld.**

Any person subject to the provisions hereof who shall sell out his business or stock of goods, or shall quit business, shall be required to make out the return provided for under Section 40-23-7, *Code of Alabama* (1975), within 30 days after the date he sold out his business or stock of goods, or quit business and his successor in business shall be required to withhold sufficient of the purchase money to cover the amount of said taxes due and unpaid until such time as the former owner shall produce a receipt from the City of Madison Revenue Department, showing that the taxes have been paid, or a certificate that no taxes are due. If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, the taxes shall be due and unpaid after the 30-day period allowed, he shall be personally liable for the payment of taxes accrued and unpaid on account of the operation of the business by the former owner. If in such cases the department deems it necessary in order to collect the taxes due the City, it may make a jeopardy assessment as provided in Title 40, Chapter 29, *Code of Alabama* (1975)."

**Section 8.** In the event that an ad valorem tax increase for school construction is duly approved by a vote of the residents of the City for property located in the City, then in the case of transactions occurring after December 31<sup>st</sup> of the year following the year in which the increase is approved by the residents of the City, the rates of taxation increased hereunder shall be reduced by one-half percent (1/2%). Such reduction shall apply only to those rates specifically addressed and increased by this ordinance.

**Section 9.** In the event that an ad valorem tax increase for school construction is not approved by a vote of the residents of the City for property located in the City, then in the case of transactions occurring after December 31, 2024, the rates of taxation increased hereunder shall be reduced by one-half percent (1/2%). Such reduction shall apply only to those rates specifically addressed and increased by this ordinance.

**Section 10.** Each and every provision of this ordinance is hereby declared to be an independent provision and the holding of any provision hereof to be void and invalid for any reason shall not affect any other provision hereof, and it is hereby declared that the other provisions of this ordinance would have been enacted regardless of any provision which might have been held invalid.

**Section 11.** This ordinance shall become effective on the 1<sup>st</sup> day of January, 2010, and the first payment of taxes hereunder shall be due and payable on the 20<sup>th</sup> day of February, 2010.

This ordinance shall remain in full force and effect and shall apply to each month of the year 2010, beginning with the month of January, and then to each month of each calendar year thereafter from year to year.

**ADOPTED** at a Regular Meeting of the City Council of the City of Madison, Alabama, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Bill Holtzclaw, President  
Madison City Council  
City of Madison, Alabama

**ATTEST:**

\_\_\_\_\_  
Melanie A. Williard  
City Clerk – Treasurer

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Paul Finley, Mayor  
City of Madison, Alabama